**CMG Successfully Defeats Claim for $370M in Defense Costs in Delaware Supreme Court**

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On August 12, 2025, the Delaware Supreme Court affirmed, in a 3-2 decision, that the Self Insured Retention ("SIR") endorsement contained in general liability policies issued by several insurers, including CMG's client, MS Transverse Specialty Insurance Company, f/k/a Royal Surplus Lines Insurance Company ("Royal Surplus"), unambiguously required that satisfaction of the $250,000 per occurrence SIR was a condition precedent to triggering coverage, and that $370M in defense costs payments made by 3M, a non-insured, and corporate parent of the insured, did not satisfy the SIR. In re Aearo Techs. LLC Ins. Appeals, 2025 Del. LEXIS 309, (Aug. 12, 2025.) Further, the Court dismissed 3M's argument that a "Non Drop Down: Bankruptcy or Insolvency" endorsement in the Royal Surplus Policy, acted as a "savings clause" to bypass the clear requirements of the SIR.

3M incurred over $370 million in legal fees and costs defending the largest Multi District Litigation ("MDL") in U.S. history, consisting of up to 280,000 claimants alleging hearing-related injuries due to the defective design of the Combat Arms Earplugs ("CAEv2"). 3M's subsidiaries, including Aearo Technologies LLC, were also defendants in many of the CAEv2 MDL actions, but are only alleged to have paid $411,000 in defense costs.

The Royal Surplus policy SIR endorsement unambiguously provided that the SIR is the amount which "you are obligated to pay," with "you" being a defined term in the policy to mean only the Named Insured. 3M argued, in contrast to the policy language, that its payments should be applied to satisfy the SIR of the insured, and that a contrary result would lead to a forfeiture of coverage by Aearo.

The Delaware Supreme Court adopted CMG's position as to the Royal Surplus policy and held that "[u]nder the plain language of the Royal Surplus policy, 3M is not a 'Named Insured' and cannot satisfy the SIR." The Supreme Court thus affirmed the Superior Court's grant of partial summary judgment in favor of the insurers, and held that "3M's payments of defense costs do not trigger coverage under the policies issued to Aearo," which "reflects our practice of enforcing unambiguous contracts as written and respecting corporate separateness." The Court stated that "[a]lthough 3M is the corporate parent, the Aearo entities are each distinct legal entities, and, absent specific circumstances not present here, we will not disregard that distinction."

Notably, the Court held that "[c]onsidering the purpose of SIRs, we conclude that each one in this case functions as a condition precedent to the respective insurer's coverage obligations." Accordingly, as the payments made by 3M did not satisfy the SIR, "the insurers' coverage obligations had not been triggered."

The dissent, by Justices LeGrow and Traynor, addressed the requirement that a condition precedent be stated clearly and unambiguously, balancing Delaware's "contractarian principles and its contempt for forfeitures." The dissent argued for a remand to the trial court to consider whether forfeiture was excused under the circumstances.

Suzanne C. Midlige argued the appeal on behalf of Transverse/Royal Surplus.